COMMONWEALTH OF MASACHUSETTS

HOUSING APPEALS COMMITTEE

FARMVIEW AFFORDABLE HOMES, LLC

v.

SANDWICH ZONING BOARD OF APPEALS

No. 02-32

DECISION

February 1, 2005

TABLE OF CONTENTS

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FARMVIEW AFFORDABLE HOMES, LLC, Appellant	)	
v.	)	No. 02-32
SANDWICH BOARD OF APPEALS, Appellee	)	

DECISION

This is an appeal, pursuant to G.L. c. 40B §§ 20-23, brought by Farmview Affordable Homes, LLC, from a decision of the Sandwich Zoning Board of Appeals, denying a comprehensive permit for the construction of 79 single family homes, of which 20 would be affordable units, on a 63-acre parcel of land situated on Snake Pond Road in Sandwich, Massachusetts. The Board denied the project arguing that its close proximity to Otis Air National Guard Base will subject the occupants to unacceptable levels of noise from aircraft take-offs and landings.

The Board, however, failed to show that the intermittent flights from Otis Air Force Base will result in a cognizable "health risk." Additionally, this parcel of land is *zoned for residential use* and there are currently hundreds of other homes adjacent to the project area and in close proximity to the Air Force Base that are subject to the same or similar levels of

noise. The Board offered no evidence suggesting that individuals living in these existing neighborhoods have suffered any physical or psychological harm from noise from the Air National Guard Base. Furthermore, the Board's argument that the residents of this proposed development will suffer psychological harm from noise irritation and that children living in this development will have learning disabilities as a direct result of elevated exterior noise levels is based on relatively inconclusive studies that were completed in areas adjacent to commercial airports with high volume air traffic, making their application in the current instance unpersuasive. In order to bring the interior noise levels into compliance with recognized standards for interior noise, Appellant has included noise attenuation construction features in its design plans.

Therefore, the Committee finds that the Board has failed to show that the noise levels at the proposed site are unacceptable and creates a health risk or safety concern that supports its denial of the Comprehensive Permit.

I. PROCEDURAL HISTORY

On April 17, 2002, Howland Development Corporation applied for a comprehensive permit to construct 79 units of single-family residential housing. The Board opened a duly noticed public hearing on May 14, 2002, and continued the hearing on June 25, 2002, July 9, 2002, July 23, 2002, and August 13, 2002. In response to comments raised at the public hearing, Appellant revised the development plan and submitted its revised application on August 13, 2002. The public hearing was closed on August 13, 2002, and by decision dated and filed with the Town Clerk on October 11, 2002, the Board denied Appellant's

application.

Appellant filed its appeal of the Board's decision with this Committee on October 29, 2002. The Committee conducted a site visit, held a six-day de novo hearing, with witnesses sworn and full rights of cross examination, and a stenographic transcript of the hearing was produced pursuant to G.L. c. 40B, § 22-23.

On February 4, 2004, Appellant filed motions to quash subpoenas of Michael Howland and Howland Development Corp., and Massachusetts Housing Finance Agency (MassHousing or MHFA) representatives Richard Herlihy and Thomas Gleason, and to exclude the report and testimony of Dr. Gary Evans. During the fifth evidentiary session, held on April 29, 2004, Chairman Werner Lohe, as presiding officer ruled to allow the testimony of Dr. Evans and to admit his report into evidence. In a separate written ruling, dated May 21, 2004, the presiding officer quashed the subpoenas and excluded evidence on the issue of whether MassHousing had appropriately considered all aspects of the site, specifically local land use concerns and site acquisition costs reflected in the pro forma, before issuing its determination of project eligibility in compliance with 760 CMR 31.01.

According to this ruling, if the Board was attempting to bring forth information on the question of site suitability, the testimony would be of little value because MassHousing officials' expertise is in the area of finance; there is no indication that they have any particular substantive expertise regarding the site suitability issues that are before us. Under the Chapter 40B statutory and regulatory framework, it is the role of the local Board (initially) and then this Committee (on appeal) to review site suitability issues in great detail in public hearings." *Farmview Affordable Homes, LLC, v. Sandwich*, No. 02-32, slip op. at 3

(Mass. Housing Appeals Committee Ruling May 21, 2004). Therefore, the Committee's review of site suitability would be based on the testimony of experts with greater substantive expertise, making it unnecessary to compel the testimony of MassHousing officials for this purpose. See *id.*

The ruling notes that the other purpose for seeking this testimony would be for the Board to challenge the nature and quality of MassHousing's project eligibility determination practices. This would be inappropriate, since "fundability is a technical, administrative matter that is solely within the province of the subsidizing agency." See *id.* at 5. Even if "there is some uncertainty about fundability, the Board or the Committee does not supplant the subsidizing agency and conduct a full review of these issues. . . . [T]his approach . . . prevents the local board from becoming unnecessarily involved in issues which are not among the health, safety, and planning concerns enumerated in the statute, and yet provides additional protection to the local community which is unavailable when non-subsidized housing is being built." *CMA, Inc. v. Westborough*, No. 89-25, slip op. at 8, 9 (Mass. Housing Appeals Committee, Jun. 25, 1992); also see *Stoneham Heights Ltd. Partnership v. Stoneham*, No. 87-04, slip op. at 7, 29, 32 (Mass. Housing Appeals Committee, Mar. 20, 1991).

Therefore, the Committee reaffirms the presiding officers ruling that the Board has failed to establish that it has a legal basis upon which it can assert that MassHousing has failed to comply with the requirements of 760 CMR 31.01(2), in arguing that it failed to fully

consider the Town's local land use concerns.[1] Following the presentation of evidence, counsel submitted post-hearing briefs.

A. Jurisdiction

To be eligible for a comprehensive permit and to maintain an appeal before the Housing Appeals Committee three jurisdictional requirements must be met. The project must be fundable under an affordable housing program, the developer must be a limited dividend organization, and it must control the site. 760 CMR 31.01(1)(a)-(c). The parties have stipulated that Farmview Affordable Homes, LLC is a limited dividend organization and that Appellant controls the project site. Pre-Hearing Order, § I-3, 4; Exh. 12 – 14. Despite the Board's argument that the procedures used by MassHousing in issuing the project eligibility letter were not in compliance with the requirements set forth in 760 CMR 31.01(b), the Committee finds that the eligibility letter issued to Appellant for this project is still in

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1. The Committee's ruling is further supported by the recent Superior Court case, *Town of Norwell v. Massachusetts Housing Finance Agency*, Plymouth Super. Ct., C.A. No. 2003-00778 (July 27, 2004). According to the court's analysis in that decision,

> "MHFA is an autonomous corporate agency created to act as a bank to finance the development of affordable housing in Massachusetts. G.L. c. 23A, App. §§1-3. . . . MHFA is not an adjudicatory body which has an integral role in the Chapter 40B permitting process but instead is a lender. . . . A project eligibility letter is not a loan commitment letter. . . . The issuance of a project eligibility letter is very tentative, preliminary step in the process. . . . MHFA is expressly deemed not to be subject to the strictures of G.L. c. 30A. G.L. c. 23A, App. §§1-3. . . . There is no provision in the statutes or regulations for an appeal by a Town from the issuance of a project eligibility letter." Id. at 2-4.

The court also found that the local permit hearing and subsequent appeals to this Committee and to the Superior Court offer a perfectly adequate remedy for a municipality to address its local land use concerns. Id. at 3. "In issuing the project eligibility letter, MHFA focused on whether the project was the type of project MHFA normally considers for funding" and need not consider the Town's concerns that are land use based and not lending concerns. Id. at 4 (emphasis added).

effect, thus satisfying this jurisdictional requirement. In addition, the Board stipulates that the Town of Sandwich has not satisfied any of the statutory minima defined in G.L. c. 40B, § 20, thereby foreclosing the defense that its decision is consistent with local needs as a matter of law pursuant to that section.[2] Pre-Hearing Order, § I-2.

II. FACTUAL BACKGROUND

The project proposes construction of 79 units of housing on a 63-acre parcel of land located south off of Snake Pond Road in Sandwich, Massachusetts. Exh. 1. Each of the units within the development will be sold to the occupant. Exh. 1. The proposal will result in 20 units of deed restricted affordable housing. Exh. 7.

The project area is zoned R-2, low density residential which requires a minimum lot size of 60,000 square feet, with 200 feet of frontage, and limits building height to 35 feet. Exh. 6, 17. There are a number of large subdivisions adjacent to the proposed project area including Country Farm Estates, which includes approximately 300 housing units and is currently 85 to 90 percent built out. Tr. I, 23-24, 30.

Approximately one-third of the land in Sandwich is under the control of the federal government. Tr. I, 33-34. Along the east of the project area boundary is the Sandwich Gate to the Massachusetts Military Reservation (MMR), which includes the Otis Air National Guard Base (Otis ANGB). Exh. 5. The MMR encompasses approximately 21,000 acres of land, of which Otis ANGB occupies approximately 3,700 acres in the southern portion. Exh.

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2. There are approximately 7,700 units of housing in the Town of Sandwich, of which only 43 are affordable single-family homes. Tr. I, 54.

50. Runway 32 of Otis ANGB is located southwest of the project boundary. Exh. 39.

A substantial portion of the property is wooded with portions to the southeast of the property remaining barren from prior use of the site. Exh. 1. There are rough roads on the property. Exh. 1. Soil contamination exists on the property, however, Appellant has agreed to remove all contaminated soil from the site, therefore, it is not at issue in this case. Exh. 1, p. 3; Tr. II, 69-73, 120. Open space as depicted on the plan is arranged to encompass the three drainage areas on the property and comprises approximately 25 acres (40%) of the project area. Exh. 1, p. 3; Tr. II, 118-119. The project area is within the interim Zone II Well Protection area. Exh. 1. No wetlands or wellhead protection issues were raised during this appeal. See generally Pre-Hearing Order.

The original proposal had eight of the housing units located within what is defined by the Air Force as the "Clear Zone (CZ)." Exh. 28. The CZ is an area that has a high potential for aircraft accidents and starts at the end of the runway and extends outward 3,000 feet. Exh. 28. During the hearing, Appellant agreed to remove the eight housing units identified as being within the CZ and has agreed to install a security fence to inhibit use of this area. Tr. II, 122, 140.

III. ISSUES

The single issue remaining in this case is whether the Board's decision to deny Appellant's request for a comprehensive permit was consistent with local needs because occupants of the proposed development would be exposed to unacceptable health risks from

elevated levels of noise generated by aircraft flights from Otis ANGB.[3] The Board argues that the proposed project site exceeds established standards for acceptable levels of noise exposure for residential development and will cause learning disabilities in children living in this development, as well as adversely affect their blood pressure, and will lead to motivational deficiencies. Board's Post-Hearing Brief at 32.

In response, Appellant argues that although the established noise regulations referred to during the hearings indicate that construction of housing in areas with noise levels equivalent to those projected for the project site are designated "normally unacceptable," these regulations also contemplate such projects may be approved if construction standards provide for sound attenuation that will provide safe interior noise levels for the occupants of the development. Appellant's Post-Hearing Brief at 12. Appellant further argues that the studies offered by the Board regarding health and psychological impacts on children from noise exposure involved conditions that are very different than those present at the project site, specifically they involved testing in the vicinity of large commercial airports, with continuous, high volume air traffic. Appellant's Post-Hearing Brief at 16.

Pursuant to 760 CMR 31.06(2), Appellant may establish its *prima facie* case by proving with respect to this issue, that its proposal complies with federal or state statutes or regulations, or with generally recognized standards as to matters of health, safety, the environment, design, open space, or other matters of local concern. According to the Board,

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3. The Pre-Hearing Order included three other issues, specifically aircraft safety issues, open space, and traffic concerns. Pre-Hearing Order, § I-B-(ii)-(4). The Board did not develop these issues either during the hearing or in its Post-Hearing Brief and therefore these claims are deemed waived. See *An-Co, Inc. v. Haverhill Board of Appeals,* No. 90-11, slip op. at 19 (Mass. Housing Appeals Committee June 28, 1994) (citing *Lois v. Berlin*, 338 Mass. 10, 13-14 (1958)).

the standard in this case should be compliance with the regulations and guidelines set by the U.S. Department of Housing and Urban Development (HUD) and the Federal Aviation Administration (FAA), and with the recommendations provided by the Air Force in the Air Installation Compatible Use Zone Resource Book for Otis Air National Guard Base (AICUZ).

Each agency has a different purpose for setting the standards that they use. The Air Force AICUZ is a Department of Defense planning program is designed to promote compatible use around airfields utilized by military departments. Exh. 28, 30, 50. The FAA Regulations are a planning tool used in defining the level of noise emitted from a source and developing models to reflect the level of noise impact on the surrounding landscape. Exh. 42, 44, & 45. The purpose of the FAA's Regulations is to assist airports in reducing the noise problem at the source. Exh. 42, 44 & 45. However, the purpose of the HUD standard, as stated in 24 CFR 51.01, is to encourage land use patterns for housing and other noise sensitive urban needs, that will provide a suitable separation between major noise sources and urban uses, and to provide policy on the use of structural and other noise attenuation measures where needed. Exh. 41.

In considering the question of noise, the Committee has previously stated that without standards to guide us, we would be in a quandary in trying to determine how much noise can be tolerated by the occupants of a proposed development. See *Northern Middlesex Housing Authority v. Billerica*, No. 89-48, slip op. at 10 (Mass. Housing Appeals Committee, Dec. 3, 1992). However, despite the fact that we are not legally bound by the standards of any of these agencies, we have previously indicated that it is appropriate for us to apply the HUD

regulations and guidelines in considering noise levels, as these regulations were specifically promulgated to insure that subsidized housing will not be built in unacceptably noisy locations. See *id.* at 11; see also *Hamlet Development Corp. v. Hopedale*, No. 90-03, slip op. at 22 (Mass. Housing Appeals Committee, Jan. 23, 1992).

Therefore, the Committee finds that the HUD regulations and guidelines are the most closely applicable standards for use in analyzing the potential impact of noise on the future occupants of the proposed development and in determining if the proposed attenuation measures will be adequate to protect the occupants from the noise generated from aircraft takeoffs and landings.

A. Defining Levels of Exterior Noise

The HUD regulation uses a straightforward, numerical descriptor known as the day night average sound level system. Exh. 44, p. 3. The day night average sound level system, abbreviated as DNL and symbolized mathematically as L_{dn}, is the 24-hour average sound level, expressed in decibels, obtained after the addition of a 10 decibel penalty for sound levels which occur at night between 10PM and 7 AM. Exh. 44, p.3. The nighttime penalty is based on the fact that many studies have shown that people are much more disturbed by noise at night than at any other time. Exh. 44, p. 3.

The HUD regulation establishes three noise level zones: (1) an acceptable zone, which is defined as having an exterior noise of 65 L_{dn} (65 decibels) or less, where all projects could be approved; (2) a normally unacceptable zone, defined as having an exterior noise level exceeding 65 L_{dn} but not exceeding 75 L_{dn} where mitigation measures would be

required; and (3) an unacceptable zone exceeding 75 L_{dn} in which projects would not, as a rule, be approved. Exh. 44, p. 4-6.

B. Calculating the Amount of Noise on the Site

According to a computer-generated model, NOISEMAP 6.5, used by the Air Force to determine noise contour levels adjacent to Otis ANGB, the project area falls within the 65-74 L_{dn} contours. Exh. 35; 37. Appellant hired an acoustic consultant to take on-site measurements to establish the actual sound levels on the property, the duration of sound levels above certain decibel thresholds, and how those levels are affected by aircraft operations on runway 32 at Otis ANGB. Tr. III, 8; Exh. 37, p. 8.

Appellant's consultant set up three sound measuring stations on lots, 29, 43, and 51, within the project area. Tr. III, 14; Exh. 37. The station on lot 29 was closest to runway 32 of Otis ANGB, which is the closest active runway to the project area, and the station on lot 51 was the furthest away from runway 32.[4] Tr. III, 15-16; Exh. 37. Measurements taken at lots 29 and 43 document the maximum potential sound exposure for anywhere on the project site. Exh. 37, p. 1. Lot 51 was selected to represent the minimum likely sound exposure on the site. Exh. 37, p. 8.

Data was collected continuously for a full week to establish what the actual 24 hour sound levels are for the day-night sound level and how this level is affected by F-15 operations on runway 32. Tr. III, 14: Exh. 37. There were no recorded nighttime flights for

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4. The approximate distance from the centerline of runway 32 to each of these lots is 1200 feet to lot 29, 1800 feet to lot 43, and 2700 feet to lot 51,. Exh. 37, p. 8.

runway 32 during the week of measurements which is in keeping with the Air Force's AICUZ resource book that no nighttime F-15 flights for this runway. Tr. III, 22, 30. The sound measuring stations were checked several times during the week, but not on a continuous or daily basis. Tr. III, 66-67. The sound measuring stations were installed by hanging them from existing tree limbs, instead of on tripods, due to the high winds normal to this location. Tr. III, 86; Exh. 37, p. 10. The measurements were taken from January 27 - February 3, 2003, during which time conditions of high winds, snow, freezing rain, and cold temperatures were noted for the site. Exh. 37, p. 8. Before the end of the 7 day measuring period, the recording devices at measuring stations on lots 29 and 51 had failed. Exh. 37, p. 10. The recording device on lot 29 failed at 8 p.m. on the night of February 2, 2003, due to loss of battery power. Data was lost after the morning of February 1, 2003 for station 51, due to water leaking into the instrument case through the microphone cable. Exh. 37, p. 10.

However, based on the data collected, the maximum measured L_{dn} on the site ranged from 59 to 68 decibels. Exh. 37, p. 10. The highest number of flights recorded for one single day, included 11 takeoffs, which occurred on January 28, 2002. Exh. 37, Table 3. The apparent number and frequency of F-15 flights operations[5] on runway 32 recorded during the seven days of monitoring averaged 14.5 per four flying days in the week. Exh. 37, p. 9.

C. Proposed Sound Attenuation Mitigation Measures

Although much of the testimony of the Board's experts was directed at establishing

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5. Operations include both the takeoff and landing component. For January 28, 2002, there were 11 takeoffs and 11 landings, or 22 operations. Exh. 37, Table 3.

that the collection methods used by Appellant's consultant was faulty, Appellant agrees that the project site falls within the 65 to 75 L_{dn} noise level defined as "normally unacceptable" in the HUD regulation. Appellant's Post-Hearing Brief at 12. Therefore, it is unnecessary for the Committee to consider further the testimony offered by the Board's witnesses on the adequacy of the data collection methods used by Appellant's consultant. Instead, Appellant asserts that the HUD standard permits new construction in the areas that fall within a 65 to 75 L_{dn}, but requires construction methods that will provide a minimum of 5 to 10 decibels of additional noise attenuation for residential buildings. The Committee agrees with Appellant's assertion as it is in keeping with our findings in *Northern Middlesex Housing Authority v. Billerica*, No. 89-48, slip op. at 10 (Mass. Housing Appeals Committee, Dec. 3, 1992).

The HUD regulations do not exclude the development of residential housing in areas with an L_{dn} in the 65 to 75 decibel range. 24 CFR 51.104(a)(2). Normal construction standards typically provide sufficient attenuation to 45 L_{dn} or less when exterior levels are 65 L_{dn} or less. Exh. 44, p. 6. The HUD regulations require 5 decibels of attenuation in addition to the attenuation provided by standard construction for areas in the 65 to 70 L_{dn} zone and 10 decibels of additional attenuation for the 70 to 75 L_{dn} zone. Exh. 44, 6. According to Appellant's plans, sound attenuation features will be incorporated into the design for each housing unit to decrease the interior noise levels to below 45 L_{dn}. Tr. II, 110; Exh. 39. HUD regulations do not contain standards for interior noise levels, but instead has established that 45 L_{dn} as the goal for interior attenuation requirements. Exh. 44, p. 6.

To meet an interior noise level of ldn 45 or below, Appellant acoustic consultant has recommended the incorporation of acoustical treatments within the building envelope to

adequately reduce the exterior noise, and mechanical ventilation to provide property owners the choice to close windows and shut doors during aircraft operations. Exh.39, Section 4.2. These acoustical treatments include providing insulation in wall cavities and attic spaces, improved performance of windows and doors through the application of secondary (storm units) glazing at these openings to provide "deep air space" at the primary noise paths into the home, and to ensure that the wall and ceiling construction is standard and contains barrier materials such as gypsum wall and ceiling finishes. Exh. 39, Section 5.1. Appellant has agreed to incorporate these acoustical treatments in the construction of the homes on this site. Appellant's Post-Hearing Brief at 19.

The Committee finds that with the inclusion of the proposed sound attenuation construction standards proposed by Appellant will meet or exceed HUD recommendations for interior noise attenuation and we have included these standards as Condition 3 of this decision.

Since the developer has established that its design will provide the necessary noise attenuation to meet generally recognized standards for interior noise levels, the Board must establish that there is a valid health, safety, environmental, design, open space, or other local concern, which supports the denial. 760 CMR 31.06(6). If the Board can establish the existence of a valid local concern, it must then further demonstrate that the local concern outweighs the regional need for housing. 760 CMR 31.06(6); see also *Hanover v. Housing Appeals Committee*, 363 Mass. 339, 365, 294 N.E.2d 393, 412 (1973); *Hamilton Housing Authority v. Hamilton*, No. 86-21, slip op. at 11 (Mass. Housing Appeals Committee Dec. 15, 1988).

D. Health Risks from Sound Exposure

According to Appellant's acoustic consultant, living in an area with sound levels of 65-75 decibels will not cause an auditory or non-auditory health risk. Tr. III, 13. The Board has not argued that living within an area with a noise level of 65-75 decibels will result in damage to the auditory system. Tr. V, 114-115; Exh. 56. However the Board argues that there are non-auditory health risks and offered the testimony an expert witness in the field of airport noise and its affects on families and children. Tr. V, 55-58; Exh. 55.

According to this witness's testimony, "levels of noise exposure likely to be experienced by residents of Farmview Estates pose significant health risks for adults and children. Noise at the levels projected to occur in this . . . development are sufficient to impair reading acquisition in young children, elevate blood pressure in children and possibly adults, and lead to motivational deficit in task performance linked to a well documented clinical syndrome called learned helplessness." Exhibit 56, p. 1; Board's Post-Hearing Brief at 32.

However, the Committee finds that the studies referred to by this expert are distinguishable from the facts in this case, mostly due to the fact that the study areas were associated with high traffic volume commercial airports, in which children were continuously exposed to loud levels of noise. Exh. 56; Tr. V. Furthermore, the results of studies on the relationship between an increase in blood pressure and elevation in noise levels are at this time still inconclusive and a relationship between elevated noise levels to other ill health effects referenced by this witness have not yet been proven to any level of certainty. Tr. V, 114-115; Exh. 56. In several of the studies referenced by the Board's witness, no link could

be established between reading deficiencies and noise exposure when factoring in socio-economic issues. Tr. V, 125-127; Exh. 49. The Committee finds that, although this witness is to be highly commended for his research into potential harmful effects of noise pollution on our society and, in particular, adverse effects on children, the evidence presented was both still in the theoretical stages of development and inconclusive in nature. The testimony, therefore, does not support a conclusion that the results of the studies are applicable to the current situation, in which fewer than a dozen military flights occur each day, or provide sufficient evidence that the occupants of the development as proposed would be subjected to a health or psychological risk related to elevated exterior noise levels.

Otis ANGB has been located in Sandwich since at least 1980, and there are hundreds of homes in the immediate area that fall within the same or similar noise level contours as estimated for the project area. Exh. 50; Tr. I, 23-24, 30. No evidence was provided to show that any of the children who lived in homes within this area have suffered from lessened cognitive ability or from any other noise related ailments.

Therefore, the Board has failed to establish a valid health or safety concern that would support its denial of the comprehensive permit.

V. CONCLUSION

Based upon review of the entire record and upon the findings of fact and discussion above, the Housing Appeals Committee concludes that the decision of the Sandwich Board of Appeals is not consistent with local needs. The decision of the Board is vacated and the Board is directed to issue a comprehensive permit as provided in the text of this decision and

the conditions below.

1. The comprehensive permit shall conform to the application submitted to the Board except as provided in this decision.
2. The comprehensive permit shall be subject to the following conditions:

The development shall be constructed as shown on drawings entitled Comprehensive Permit Application Plan of Farmview Estates – Subdivision Layout, dated 1/03/03, by David C. Thulin. Exh. 15.

3. All of the homes constructed for this project shall comply with the noise abatement standards in the "Farmview Estates New Construction Acoustical Design Format – Approximate 30 dB – 35 dB Noise Level Reduction (NLR), Exterior to Interior. Exh. 34.
4. Should the Board fail to carry out this order within thirty days, then, pursuant to G.L. c. 40B, § 23 and 760 CMR 31.09(1), this decision shall for all purposes be deemed the action of the Board.
5. Because the Housing Appeals Committee has resolved only those issues placed before it by the parties, the comprehensive permit shall be subject to the following further conditions:

(a) Construction in all particulars shall be in accordance with all presently applicable local zoning and other by-laws except those waived by this decision or in prior proceedings in this case.

(b) The subsidizing agency may impose additional requirements for site and building design so long as they do not result in less protection of local concerns than provided in the original design or by conditions imposed by the Board or this decision.

(c) If anything in this decision should seem to permit the construction or operation of housing in accordance with standards less safe than the applicable building and site plan requirements of the subsidizing agency, the standards of such agency shall control.

(d) No construction shall commence until detailed construction plans and specifications have been reviewed and have received final approval from the subsidizing agency, until such agency has granted or approved construction financing, and until subsidy funding for the project has been committed.

(e) The Board shall take whatever steps are necessary to insure that a building permit is issued to the applicant, without undue delay, upon presentation of construction plans, which conform to the comprehensive permit and the Massachusetts Uniform Building Code.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, s. 22 and G.L. c. 30A by instituting an action in the Superior Court within 30 days of receipt of the decision.

Date: February 1, 2005

Housing Appeals Committee

Werner Lohe, Chairman

Joseph P. Henefield

Marion V. McEttrick

Glenna J. Sheveland, Counsel